No. 02-542

(4)

Supreme Court, U.S.
FILED
NOV 7 2002
OFFICE OF THE CLERK

IN THE
SUPREME COURT OF THE UNITED STATES

TERESA BALLARD, ET AL.

Petitioners

v.

SHEILA MARTIN and WESTARK FINANCIAL CONSULTANTS OF JONESBORO, INC., ET AL.

Respondents

ON PETITION FOR WRIT OF CERTIORARI
TO THE SUPREME COURT OF THE
STATE OF ARKANSAS

RESPONDENTS' BRIEF IN OPPOSITION

ROBERT L. JONES, JR.
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Westark Financial Consultants of Jonesboro, Inc., et al.

6 pp

PARTIES TO THE PROCEEDING AND STATEMENT PURSUANT TO RULE 29.6

For all nineteen Respondents, there is no parent or publicly held company owning ten percent (10%) or more of the corporation's stock.

1. Westark Financial Consultants of Little Rock, Inc.
2. Westark Financial Consultants of North Little Rock, Inc.
3. Westark Financial Consultants of Jonesboro, Inc.
4. Westark Financial Consultants of Jacksonville, Inc.
5. Westark Financial Consultants of Pine Bluff, Inc.
6. Westark Financial Consultants of Rogers, Inc.
7. Westark Financial Consultants of Springdale, Inc.
8. Westark Financial Consultants of Russellville, Inc.
9. Westark Financial Consultants of Fayetteville, Inc.
10. Westark Financial Consultants, Inc.
11. Cash Advance of Benton, Inc.
12. Cash Advance of North Little Rock, Inc.
13. Cash Advance of Little Rock, Inc.
14. Executive Cash Advance of Little Rock, Inc.
15. C&B Enterprises, Inc.
16. H&S Enterprises of Rogers, Inc.
17. H&S Enterprises of Fayetteville, Inc.
18. H&S Enterprises of Springdale, Inc.
19. Payday Advance of Fort Smith, Inc.

REASONS FOR DENYING THE WRIT

The sole question presented by the Petition is "[d]oes due process require the adoption and use of objective standards to gauge whether a trial court abused its discretion in approving a proposed class action settlement agreement?" On appeal to the Arkansas Supreme Court, the Petitioners challenged whether the trial court adequately enforced subpoenas against the Westark Appellees, and whether the notice to potential class members was adequate. The Respondents submit that the Arkansas Supreme Court's ruling was proper in all respects and respectfully urge this Honorable Court to deny the Petition for Writ of Certiorari. This case raises no significant issue of law that warrants this Court's review.

The Petitioners complain that the Arkansas Supreme Court adopted the standards set out in Grunin v. Int'l House of Pancakes, 513 F.2d 114 (8th Cir. 1975), but proceeded to misinterpret and misapply the standards enunciated in Grunin, resulting in a denial of due process. The Petitioners do not assert that the Grunin standards fail to provide due process protections, but they simply argue that the Arkansas Supreme Court misapplied the applicable rule of law to the facts of this case.

The Petitioners received adequate due process of law. At the fairness hearing before the trial court on June 1, 2001, the trial court heard the Intervenor's (Petitioner's) Motion to Enforce Trial Subpoenas. The Westark Respondents presented the testimony of Jeff Forsey, who testified in his capacity as the chief executive officer of fourteen (14) of the Westark Respondents and as custodian of financial documents for all nineteen (19) Westark Respondents. Jeff Forsey appeared in person at the fairness hearing and the trial court ruled that his personal appearance and production of financial records satisfied the

subpoenas, considering the short time (two days) allowed the Westark Respondents to respond to the subpoenas.

The notice to potential class members was adequate and the Petitioners received due process of law. The notice of the fairness hearing was mailed on May 16, 2001, and the fairness hearing was held on June 1, 2001. The Arkansas Supreme Court noted that courts have approved notices given to a class within a comparable time period before the fairness hearing, citing Grunin v. Int'l House of Pancakes, supra, (holding that notice sent out nineteen days before fairness hearing was not a violation of due process); Armstrong v. Board of School Directors, 616 F.2d 305 (7th Cir. 1980)(holding that notice sent out twelve days before fairness hearing was not a violation of due process). The Arkansas Supreme Court further held that the notice contained an opt-out provision which advised the class members that they could choose to opt out of the settlement and that they had until August 15, 2001, to exercise that right. In this case, class members had almost three (3) months' notice of the opt-out deadline. Additionally, the Petitioners had an opportunity to appear at the fairness hearing and they did so through counsel. Counsel for the Petitioners cross-examined the witnesses for the class representatives as well as the witness for the Respondents.

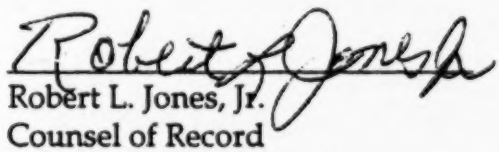
The Arkansas Supreme Court held that the mailing of individual notices to potential class members by standard mail was adequate, as such members of the class had notice of their right to opt out of the class in plenty of time. Additionally, the notice of class certification, the proposed settlement, and the opt-out date were supplemented by a notice published on May 21, 2001, in the Arkansas Democrat-Gazette, a newspaper with statewide circulation. The Arkansas Supreme Court held that the notice process comported with the minimum standards of due process.

The Arkansas Supreme Court adopted the standards from Grunin v. Int'l House of Pancakes, supra., applied that law to the facts in this case, and concluded that the trial court did not abuse its discretion in approving the class settlement. The court analyzed each issue raised on appeal according to those standards. The Petitioners received adequate due process and the Arkansas Supreme Court's holding in this case was proper in all respects. The Petition for Writ of Certiorari should be denied.

CONCLUSION

For all of the foregoing reasons, Respondent respectfully requests that this Honorable Court deny the Petition for Writ of Certiorari.

Respectfully submitted,



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